

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DIANE RICE**, on January 12, 2005 at 8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Diane Rice, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Ron Stoker, Vice Chairman (R)
Rep. Arlene Becker (D)
Rep. Robyn Driscoll (D)
Rep. George Everett (R)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Roger Koopman (R)
Rep. Michael Lange (R)
Rep. Tom McGillvray (R)
Rep. Mark E. Noennig (R)
Rep. Art Noonan (D)
Rep. John Parker (D)
Rep. Jon Sonju (R)
Rep. John Ward (R)
Rep. Jeanne Windham (D)

Members Excused: None.

Members Absent: Rep. Bill Wilson (D)

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 33, HB 146, HB 90, HB 42,
1/5/2005
Executive Action: HB 94-Tabled, HB 95-Tabled
HB 61-Tie Vote

HEARING ON HB 33

REP. DAVE GALLIK, HD 79, HELENA

Opening Statement by Sponsor:

REP. DAVE GALLIK, HD 79, opened the hearing on HB 33, Jury trial for municipal infractions.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 37}

Proponents' Testimony:

Dave Nielsen, Attorney-City of Helena, rose in support of HB 33. He informed the committee that the municipal infraction bill was passed in 1999. This provided cities with the tool to decriminalize some lesser offenses.

{Tape: 1; Side: A; Approx. Time Counter: 37 - 55}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REPS. WARD, CLARK, STOKER, NOONAN, NOENNIG and RICE posed questions to REP. GALLIK and Mr. Nielsen. Among their questions were: "Has this not existed to expedite actions in lower courts, would there be increased costs to the court system and if defendants were found guilty would they pay the court costs?"

Mr. Nielsen answered questions regarding "barking dog" ordinances; if jury trials would be an option for that offense. He also explained city ordinances and misdemeanors. REP. GALLIK answered further questions: 1)"If a local municipality does not want those types of infractions, would they be required to; 2)is it up to each local municipality to decide; 3)and whether this bill would be an 'unfunded mandate'."

CHAIRMAN RICE queried Mr. Nielsen about a situation whereby an individual receives a judicial decision in either JP or municipal court and that person is dissatisfied with that decision; "Could that person appeal to a higher court and receive a jury trial?"

Mr. Nielsen answered: "If you do an appeal from a city (municipal) court under the municipal infraction, you do not get a new jury trial at the district court, it is based on the record."

CHAIRMAN RICE further asked **Mr. Neilsen** if the Helena smoking ban ordinance would fall under this; and what the penalty os that is laid out for those violations. **Mr. Neilsen** responded by saying that it was in Helena's smoking case in which the city court ruled that the municipal infraction statute unconstitutionally deprived the offender of a jury trial. The penalty was \$100.
{Tape: 1; Side: A; Approx. Time Counter: 55 - 399}

Closing by Sponsor:

REP. GALLIK closed the hearing on HB 33 and suggested to the committee that the this statute should be adopted. That, should a local municipality decide to treat a misdemeanor as a municipal infraction; the process should be the same.
{Tape: 1; Side: A; Approx. Time Counter: 399 - 438}

HEARING ON HB 146

REP. DAVE GALLIK, HD 79, HELENA

Opening Statement by Sponsor:

REP. DAVE GALLIK HD 79, opened the hearing on HB 146, Civil false claims act. **REP, GALLIK** informed the committee this bill is identical to legislation in 2003 which was brought before this committee, he went further and explained the nuances of this bill to committee members.

{Tape: 1; Side: A; Approx. Time Counter: 438 - 500}

{Tape: 1; Side: B; Approx. Time Counter: 0 - 90}

Proponents' Testimony:

Al Smith, Montana Trial Lawyers Association, rose in support of this bill and stated to committee members that in essence this is privatization of watchdogs.

{Tape: 1; Side: B; Approx. Time Counter: 90 - 119}

Ali Bovington, Montana Assistant Attorney General, rose in support of HB 146. She stated that this bill would provide another avenue of relief for state government to recover funds and that it mirrors federal law.

{Tape: 1; Side: B; Approx. Time Counter: 119 - 136}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REPS. EVERETT, HARRIS, KOOPMAN, NOENNIG and MCGILLVRAY

questioned the sponsor of this bill extensively. The questions included were: 1) whether each agency has its own way of dealing with false claims; 2) whether or not current and/or retired employees could qualify for these "finders fees;" 3) the different percentages awarded to the recipients; private citizens vs. private entities; 4) the federal law and percentages given vs. state and frivolous; as well as numerous and false claims that were made. **REP. GALLIK** responded to the "finder's fee" question specifically and stated there is a concern with government that when employees in a effort to collect these fees, employees may not do their "regular" job.1

{Tape: 1; Side: B; Approx. Time Counter: 136 - 446}

Closing by Sponsor:

REP. GALLIK closed the hearing on HB 146.

{Tape: 1; Side: B; Approx. Time Counter: 446 - 500}

HEARING ON HB 90

REP. CHRISTINE KAUFMANN, HD 81, HELENA

Opening Statement by Sponsor:

REP. CHRISTINE KAUFMANN, HD 81, opened the hearing on HB 90, Extend domestic violence fatality review commission.

EXHIBIT(juh08a01)

{Tape: 2; Side: A; Approx. Time Counter: 0 - 61}

Proponents' Testimony:

Ali Bovington, Montana Assistant Attorney General, rose in support of HB 90. **Ms. Bovington** informed the committee that this commission was started in 2003 by the legislature. The purpose of this review commission is not to find the fault but to review what could have been done to prevent this incident, what agencies were involved and what could have helped the victim and offender to prevent this tragedy from ever occurring. She also stated this commission is funded by a \$10,000 grant through the Violence Against Women Act funded by the federal government.

EXHIBIT(juh08a02)

{Tape: 2; Side: A; Approx. Time Counter: 61 - 104}

Matt Dale, Montana Office of Victims Services, handed out copies of the report that highlights the work that the review commission is doing. **Mr. Dale** informed the committee that Montana is one of 35 states that have these commissions. Montana has received national recognition for this commission's work. The "team" goes to communities and works with the local law enforcement agencies, the child protective services and any other agencies connected with the parties involved.

EXHIBIT(juh08a03)

{Tape: 2; Side: A; Approx. Time Counter: 104 - 160}

Kate Cholewa, Montana Coalition Against Domestic and Sexual Violence, stated that the work of this commission can help the systems in place and save lives.

{Tape: 2; Side: A; Approx. Time Counter: 160 - 168}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REPS. MCGILLVRAY, KOOPMAN, WARD, GUTSCHE, STOKER, HARRIS and RICE questioned **REP. KAUFMANN** and **Mr. Dale** extensively regarding the necessity of this commission, the funding coming from a taxpayer at the federal level, if the commission's recommendations are being implemented, if members of the commission receive pay for their work, whom the commission reports their findings to and what criterion does the commission use in choosing the cases they review. The representatives continued their questions regarding number of fatalities, why doesn't the commission fix blame on the parties that may have not done their jobs, is there a "danger assessment" and how is that information distributed to various agencies who may become involved.

{Tape: 2; Side: A; Approx. Time Counter: 168 - 436}

Closing by Sponsor:

REP. KAUFMANN closed the hearing on HB 90.

{Tape: 2; Side: A; Approx. Time Counter: 436 - 500}

HEARING ON HB 42

REP. WAYNE STAHL, HD 35, SACO

Opening Statement by Sponsor: REP. WAYNE STAHL, HD 35, opened the hearing on HB 42, Costs and attorney fees awarded for adoption of invalid administrative rule. REP. STAHL informed the committee that this bill is simple; it changes the word "may" to "shall" in the statute.

EXHIBIT(juh08a04)

{Tape: 2; Side: B; Approx. Time Counter: 0 - 35}

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REPS. HARRIS, NOONAN, KOOPMAN, BECKER, CLARK, WARD, NOENNIG and LANGE asked numerous questions of the sponsor. Some of the questions were: 1) the lack of clarity in the new section; and 2) if there were cases where the judgement should not be awarded; if so would that be at the discretion of judges; and would this result in fewer court cases.

When REP. HARRIS was questioning REP. STAHL, he was very interested in statements made regarding agencies not following regulations and stated that he would like specific examples of the agencies making their own rules and regulations. Additional questions were posed to the sponsor regarding payments, attorneys' fees, compliance and that existing statutes have a high bar to prove "arbitrary and capricious" language.

{Tape: 2; Side: B; Approx. Time Counter: 35 - 490}

Closing by Sponsor:

REP. STAHL closed the hearing on HB 42.

{Tape: 2; Side: B; Approx. Time Counter: 490 - 500}

EXECUTIVE ACTION ON HB 61

Motion: REP. LANGE moved that HB 61 DO PASS.

Discussion:

REP. KOOPMAN spoke in support of this bill. It will keep insurance rates down; it is a positive for the recreation industry; and will reduce threats of lawsuits. REP. KOOPMAN informed the committee that he had spoken with **Senator Grant Larson** from **Wyoming** whose state has an "inherent risk" statute currently. **Senator Larson** stated: "This legislation has had a profound effect; I would call it a very, very successful legislation, the net effect is to reduce frivolous lawsuits."

REP. HARRIS questioned REP. KOOPMAN regarding frivolous lawsuits and the number filed in Montana. He inquired how this bill would affect recreational activities in Montana; about the example REP. KOOPMAN made regarding water sports; and that Section 4 would not apply.

REP. NOENNIG questioned REP. KOOPMAN regarding the conversation he had with the Senator from Wyoming and if he was confident that the two of them were talking about the same type of bill; i.e., percentage responsibility assessment between recreationalists and the operator. That provision is not in this bill. It is used with comparative negligence lawsuits; this bill is an inherent risk bill.

REP. KOOPMAN assured REP. NOENNIG that he and the Senator were talking about the same type of bill. The representative stated that there is a principle here that would be visited upon by the jury and/or the judge.

{Tape: 3; Side: A; Approx. Time Counter: 0 - 178}

REP. NOENNIG then informed the committee members that he had spoken to Ms. Knutsen in Alaska; the woman who had testified via a phone on the day of the hearing. The representative inquired of Ms. Knutsen whether insurance's rates had dropped, discussed the statute and whether any new thing is created in the law to change the insurance and liability climate.

Motion: REP. NOENNIG MOVED that HB 61 BE AMENDED WITH THE 61-03 AMENDMENT.

EXHIBIT(juh08a05)

Discussion:

REP. NOENNIG explained the amendment (Page 2, Line 12) to the other committee members. **REPS. WARD, LANGE, CLARK, GUTSCHE** discussed the amendment and its ramifications.

{Tape: 3; Side: A; Approx. Time Counter: 178 - 386}

REP. LANGE called for the "question" however; **REP. CLARK** wanted to segregate a portion of the amendment.

Therefore, Section 4 was discussed as to the removal of Section 4. **Mr. MacMaster** explained to the committee that the first three amendments in 61-03 are clean up amendments that must be made if adoption of a substantive amendment (Sections 4-6). **Mr. MacMaster** suggested the committee allow him to make the changes in the titles of bills if substantive amendments are to be adopted and the title needs to be changed.

(**REP. LANGE** withdrew his motion "for the question")

Motion/Vote: **REP. CLARK MOVED to SEGREGATE SECTIONS 4-6 FROM 61-03 AMENDMENT.** Motion failed 9-9 by roll call vote. **REPS. STOKER, BECKER, DRISCOLL, EVERETT, HARRIS, MCGILLVRAY, NOENNIG, WARD and WINDHAM** voted aye.

(VOTING BY PROXY VOTES WERE **REPS. PARKER AND WILSON**)

{Tape: 3; Side: A; Approx. Time Counter: 386 - 500}

{Tape: 3; Side: B; Approx. Time Counter: 0 - 38}

Motion/Vote: **REP. NOENNIG MOVED to SEGREGATE SECTIONS 5-7 FROM 61-03 AMENDMENT.** Motion carried 14-4 by roll call vote with **REPS. GUTSCHE, NOONAN, PARKER, and WARD** voting no.

(VOTING BY PROXY VOTES WERE **REPS. PARKER AND WILSON**)

Motion: **REP. NOENNIG moved that HB 61 DO PASS AS AMENDED.**

Motion: **REP. LANGE MOVED that HB 61 BE AMENDED with 61-01 AMENDMENT.**

Discussion:

CHAIRMAN RICE and Mr. MacMaster explained to committee members that this amendment is in reference to amendment 61-01 that is the sponsor's amendment.

Vote: Motion carried unanimously by voice vote.

Motion: **REP. KOOPMAN MOVED that HB 61 BE AMENDED WITH 61-02 AMENDMENT.**

EXHIBIT(juh08a06)

REP. KOOPMAN informed the committee that the sponsor referred to this as a "friendly amendment," he further explained the amendment.

Discussion:

REPS. BECKER, WARD, HARRIS, CLARK, KOOPMAN and SONJU discussed the amendment as to the target range and shooting language contained in the amendment.

Vote: Motion carried 10-8 by roll call vote with REPS. BECKER, CLARK, DRISCOLL, GUTSCHE, HARRIS, PARKER, WILSON, and WINDHAM voting no.

(VOTING BY PROXY WERE REPS. LANGE, NOENNIG, PARKER AND WILSON.)

(REP. LANGE RETURNED TO THE COMMITTEE HEARING)

Motion: REP. LANGE moved that HB 61 DO PASS AS AMENDED.

Discussion:

REPS. HARRIS, NOONAN, KOOPMAN, GUTSCHE, CLARK and Mr. MacMaster discussed the bill in its entirety.

Vote: Motion failed 9-9 by roll call vote with REPS. STOKER, EVERETT, KOOPMAN, LANGE, MCGILLVRAY, NOENNIG, SONJU, WARD and RICE voting aye.

(VOTING BY PROXY WERE REPS. PARKER AND WILSON.)

{Tape: 3; Side: B; Approx. Time Counter: 38 - 500}

{Tape: 4; Side: A; Approx. Time Counter: 0 - 45}

EXECUTIVE ACTION ON HB 94

Motion: REP. STOKER moved that HB 94 DO PASS.

Substitute Motion/Vote: REP. GUTSCHE moved that HB 94 BE TABLED. Motion carried 10-8 by roll call vote with REPS. EVERETT, KOOPMAN, LANGE, MCGILLVRAY, RICE, SONJU, STOKER, and WARD voting no.

VOTING BY PROXY WERE REPS. DRISCOLL, LANGE, PARKER AND WILSON.)

{Tape: 4; Side: A; Approx. Time Counter: 45 - 70}

EXECUTIVE ACTION ON HB 95

Motion: REP. KOOPMAN moved that HB 95 DO PASS.

Substitute Motion/Vote: REP. NOONAN moved that HB 95 BE TABLED.

Motion carried 11-7 by roll call vote with REPS. EVERETT,
KOOPMAN, LANGE, MCGILLVRAY, RICE, SONJU, and STOKER voting no.
(VOTING BY PROXY WERE REPS. PARKER AND WILSON.)

{Tape: 4; Side: A; Approx. Time Counter: 70 - 95}

ADJOURNMENT

Adjournment: 11:45 A.M.

REP. DIANE RICE, Chairman

PAM SCHINDLER, Secretary

DR/PS

Additional Exhibits:

EXHIBIT ([juh08aad0.PDF](#))